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February 29, 2008

Mr. David T. Maloof
 Maloof Browne & Eagan, LLC
 411 Theodore Fremd Avenue, Suite 190
 Rye, NY 10580

VIA E-MAIL

Re: *Underwriters, et al. v. TMC*

Dear Mr. Maloof:

This letter acknowledges receipt of your e-mail of February 26, 2008 (5:11 p.m.) regarding a proposed forum in which to resolve this case.

At the outset, you should be aware of our strong belief that neither TMC nor Yellowstone has any obligation to mediate and/or arbitrate this dispute with the Boeing insurance carriers. In this regard, we would invite your attention to the case of *ASW Allstate Painting & Construction Co., Inc. v. Lexington Insurance Company*, 94 F.Supp.2d 782 (W.D. Tex. 2000). This case is directly on point, and provides ample authority for our pursuit of a resolution of this matter in court. Moreover, we do not believe there is substantive merit to your claims, regardless of the forum in which it is adjudicated. Under the Carmack Amendment and its preemption of state law, notions of gross negligence on the part of the driver are not relevant. Even if gross negligence were a relevant issue, we do not agree that there was gross negligence in this case, whether analyzed under Washington law or that of any other jurisdiction. Simply stated, the limitation of liability provisions of the contract apply and TMC/Yellowstone liability does not exceed \$50,000.

Initially, we note that your proposal is conditioned upon our client's agreement to submit to and participate in an AAA mediation. We would reiterate that neither TMC, nor Yellowstone, has an obligation to engage in such mediation, and will not participate in such a mediation. Accordingly, your proposal of February 26, 2008 is not acceptable.

Notwithstanding the above, we remain willing to discuss the jurisdictional issues with you, other than arbitration, to which we will not agree. However, before we would



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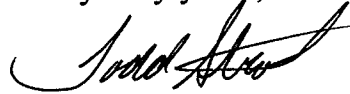
Mr. David T. Maloof
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entertain thoughts of agreeing to a jurisdiction other than the U.S. District Court for the Northern District of Illinois, we would be interested in hearing your reasons as to why this Court does not have jurisdiction, what court you believe does have jurisdiction, and why. Additionally, we would also like to know your reason as to why you believe the U.S. District Court for the Northern District of Illinois would not be the proper venue, what court you think would be the proper venue, and why.

If you could provide us with additional information and authority, as requested in the foregoing paragraph, we will be happy to consider further suggestions.

In the meantime, and until some other procedure is agreed upon, we feel it appropriate to pursue the litigation we have filed.

Very truly yours,



Todd A. Strother



Denny M. Dennis

TAS/DMD/lca

Anderson, Lucy C.

From: Denny Dennis (Lucy Anderson)
Sent: 2/29/2008 3:57:30 PM
To: Dmaloof@maloofandbrowne.com
CC:
BCC: Dennis, Denny, Strother, Todd,

Attachments:

Priority: Normal
Request: None
Security: Normal
Deliver After 0 days(s)

Subject: See Correspondence dated 2/29/08 re: Underwriters v TMC

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